

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested. No new matter has been added.

Claim Objections

Claim 24 has been amended to correct the errors as suggested in the office action.

35 U.S.C. § 103

Claims 20-24 stand rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over Multer et al (U.S. Patent No. 6,694,336) in view of Creswell et al. (U.S. Patent No. 6,445,783) and Multer et al. (U.S. Patent No. 7,415,486, “Multer”). These rejections are respectfully traversed.

For a proper rejection under 35 U.S.C. §103(a), the Office “bears the initial burden of factually supporting any *prima facie* conclusion of obviousness” and must therefore present “a clear articulation of the reason(s) why the claimed invention would have been obvious.” MPEP §2142. An obviousness rejection “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” MPEP §2141 quoting *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1386, 1385 (2007). This rationale must include a showing that all of the claimed elements were known in the prior art and that one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, to produce a combination yielding nothing more than predictable results to one of ordinary skill in the art. *KSR*, 82 USPQ2d at 1395. MPEP §2141.02 further notes that “a prior art reference must be

considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). The rejection over the cited references fails to satisfy this burden with regard to the currently pending claims (especially with regard to claim 24 as described below).

The current claims were previously presented in order to clarify the differences between adapted messages and generic messages and to further clarify how the generic messages are consumed on the auxiliary platforms. The undersigned maintains the position that the cited references, in particular Multer, fail to recite the specific message types and transport as recited in the claims. In fact, Multer fails to even use the term “message” within its specification in relation to data synchronization, and as a result, the skilled artisan would not have been resulted in the claimed subject matter by combining the cited references.

For example, col. 12, line 10 of Multer simply states that a change log is a self describing series of sync transactions and that the change log may be encrypted and compressed before output to the network. This passage fails to recite generic messages that identify changes to the data objects on a primary platform (in part because there is no suggestion that the output is message based). Col. 17, line 46 states that differences are logged as transactions in the difference information and additional that data packs are transported to a storage server that may be actively managed by a management server for each individual user account and devices. Again, this passage also does not state that the such transport is message-based. Moreover, it is an overstatement that such passage relates to generic messages that are not dependent on a specific platform. Col. 5, line 60 of Multer states that a differencing transmitter extracts information extracted into difference information. Again, no reference is made here to generic

messages or that there is a conversion of messages from one format to another. Col. 6, line 29 simply states that the information delta is transmitted between systems - no mention is made of a specific message type (e.g., generic or adapted) or the format or specific contents of such transmissions. Similarly, col. 6, line 13 states that difference information is used to reconstruct binary files - not how such difference information is transported or that two types of messages are used.

Moreover, it is respectfully submitted that the interpretation of Multer (486) is overly broad in that Multer (486) does not disclose that a user identifier is linked to two more device identifiers. Col. 3, lines 14 of Multer (486) simply states that the synchronization system can maintain matching records and data for a user across multiple network coupled devices and col. 33, line 54 - col. 34, line 20 simply states that multiples types of data can be changed can conflicts can be resolved. In this matter, the explicitly recited claim language of the user identifier being linked to or more device identifiers by polling a database is not taught.

Claim 24 stands rejected as allegedly corresponding substantially to claim 20. However, it is respectfully submitted that claim 24 was added in an effort to advance the prosecution of this case and includes specific features that are not found within the cited art. The failure to provide a clear basis for the rejection of this claim violates 35 USC § 132 in that the explanation provided by the Examiner lacks sufficient specificity. Stating, in a parenthetical, that certain features are all disclosed in Multer does not provide sufficient notice to Applicant nor does it serve to advance prosecution of the current subject matter. Thus, the Applicant respectfully submits that the rejection, as a whole, violates 35 USC § 132 and is, therefore, improper. If there are any outstanding issues after taking into account this response, it is respectfully submitted that the current Final Office Action should be withdrawn a new Office Action issued.

It is believed that because certain elements recited in claim 24 are not suggested or disclosed by Multer and that it appears, based on the manner in which the rejection of claim 24 is stated, that the Office has asserted “Official Notice” with regards to claim elements that are allegedly “well known.” Applicant respectfully reminds the Office of the proper standard for asserting “Official Notice” as the grounds for rejection of claims in an application for U.S. Patent. Per MPEP §2144.03(A): “Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” Furthermore, “assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.” *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21 as quoted in MPEP §2144.03(A).

Furthermore, were these aspects of claim 24 actually “well known,” identification and production of an appropriate reference should not present the Office with an unreasonable burden. As noted at MPEP §2144.03(B), “the applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice so as to adequately traverse the rejection in the next reply after the Office action in which the common knowledge statement was made.”

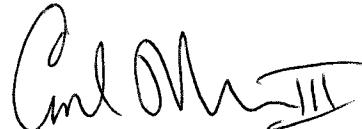
Accordingly, it is respectfully submitted that the claims should be allowable.

Concluding Comments

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. Applicant asks that all claims be allowed.

If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below. The Commissioner is hereby authorized to charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. 34874-281.

Respectfully submitted,



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